

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 467 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE ANIL R. DAVE****AND****HONOURABLE MR.JUSTICE H.B.ANTANI**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy
of the judgment?

4 Whether this case involves a substantial question
of law as to the interpretation of the
Constitution of India, 1950 or any order made
thereunder?

5 Whether it is to be circulated to the Civil
Judge?

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SIDIK ALIAS MATUNGA ABDULLAH BADAM - Appellant**Versus****STATE OF GUJARAT - Respondent**

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Appearance :

MR MAKBUL I MANSURI for the Appellant.

MR LR PUJARI, ADDITIONAL PUBLIC PROSECUTOR for the Respondent.

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE**and****HONOURABLE MR.JUSTICE H.B.ANTANI****Date : 06/07/2006****ORAL JUDGMENT****(Per : HONOURABLE MR.JUSTICE H.B.ANTANI)**

1. This appeal is directed under Section 34 (4) of the Prevention of Terrorism Act, 2002 ("POTA", for short) against the judgment and order dated 05-12-2005 passed by the learned Special Judge (POTA), Ahmedabad in Criminal Miscellaneous Application No. 3055 of 2005, rejecting the regular bail application preferred by the appellant and granting only temporary bail for a period of two months.

2. The appellant came to be arrested in connection with the offence registered with the Godhra Railway Station being C.R. No. I-9 of 2002 for the offences punishable under Sections 143, 147, 148, 149, 337, 338, 34, 153 (A), 302, 307 of IPC; Sections 141, 151, 152 of Indian Railways Act; Sections 3 and 4 of Prevention of Damaged Properties Act; Section 135 of Bombay Police Act; and Section 3 (2) and 3 (3) of POTA. On earlier occasion, the appellant was granted temporary bail on the ground of ill-health followed by extensions from time to time by the Special Court (POTA) but, lastly, his application for further extension of bail was refused and he surrendered on 18-04-2005. Thereafter, he preferred Criminal Miscellaneous Application No. 3055 of 2005 before the learned Special Judge. After considering the ill-health of the appellant, the learned Judge granted temporary bail for a period of two months on the terms and conditions as set out in the order dated 05-12-2005. Being aggrieved by the aforesaid order, the appellant has preferred the present appeal.

3. Mr. M. I. Mansuri, learned Advocate representing the appellant, submitted that on perusal of the Certificate dated 05-07-2006 issued by the Medical Officer, Jail Dispensary, Central Prison Hospital, Ahmedabad, it becomes clear that the health of the appellant has considerably deteriorated and taking into account the serious nature of the ailment of the appellant, he is required to be released on bail. The learned Advocate further submitted that the appellant is in judicial custody since the date of the arrest. The learned Advocate urged that under these circumstances, if the appellant is enlarged on regular bail on the terms and conditions which the Hon'ble Court may deem fit to impose on him, then he would be in a position to take treatment from the Doctor of his choice. In view of the aforesaid facts and circumstances of the case, the prayer is set out in the memo of the appeal to enlarge the appellant on regular bail.

4. As against the aforesaid submissions, Mr. L. R. Pujari, learned Additional Public Prosecutor representing the State, has produced the Certificate dated 05-07-2006 issued by the Medical Officer, Jail Dispensary, Central Jail, Ahmedabad, wherein it has been mentioned that it is a case for Pulmonary T.B. and Bone T.B. The treatment in respect of the same was given. As per the said report, the appellant was operated for Koch's (T.B.) spine. The Bone T.B. and abscess was drained (02/04/04) and he had completed

AKT 2 also. At present, he has complaint of pain in leg and chronic cough which is treated symptomatically, otherwise patient's general condition is good. It is further mentioned that all the necessary treatment and drugs are available at Ortho and TBCD Department, Civil Hospital, Ahmedabad and Jail Dispensary. The aforesaid certificate, as per the submission of learned Additional Government Pleader, was issued on the basis of Medical Reports to the appellant, and as adequate care was taken in the Jail Dispensary by the Doctors, the appeal for regular bail cannot be entertained. The learned Additional Public Prosecutor further submitted that even on earlier occasion, his application being Miscellaneous Criminal Application No. 2740 of 2003 for regular bail, on the ground that the investigations could not be completed within the stipulated period, was considered by the Special Court and after considering the same, the plea for regular bail was rejected. Aggrieved by the aforesaid order, the appellant had preferred Criminal Appeal bearing No. 550 of 2004 and the Division Bench of this Court, after considering the role played by him and the nature of evidence against him, had dismissed the appeal. In view of the detailed order passed by the learned Special Judge (POTA) and confirmed by this Court, the present application preferred by the appellant does not call for any interference by this Court and the same is liable to be rejected.

5. This Court has heard Mr. M. I. Mansuri, learned Advocate for the appellant-accused and Mr. L. R. Pujari, learned Additional Public Prosecutor for the respondent-State, at length and in great detail. This court has also undertaken a complete and comprehensive appreciation of all vital features of the case.

6. On perusal of the order passed by the learned Special Judge (POTA), the medical case-papers as well as the detailed report, which was submitted by the Medical Officer, Jail Dispensary, it is clear that the learned Special Judge (POTA), after considering the report as well as the ailment from which the appellant is suffering, disallowed the application for regular bail and granted only temporary bail for a period of two months purely on humanitarian grounds on the terms and conditions incorporated in the order passed below Exh. 1. On perusal of the record, it is also revealed that on earlier occasion, the application for regular bail bearing Criminal Miscellaneous Application No. 2740 of 2003 was heard by the learned Special Judge (POTA) and the same was rejected. Aggrieved by the said order, Criminal Appeal bearing No. 550 of 2004 was preferred before the High Court and a detailed order dated 30-10-2004 was passed by the Division Bench of this Court (Coram: R. K. Abichandani and Ms. H. N. Devani, JJ.) rejecting the said appeal. It has been elaborately discussed by the learned Special Judge (POTA) as well as in appeal by the Division Bench of

this Court about the entire background of the case as well as the role attributed to the present appellant and the *prima facie* involvement of the appellant. Thus, taking into account the aforesaid facts and circumstances of the case, the prayer for enlargement of the applicant on regular bail was dismissed by the Division Bench of this Court.

7. In view of the foregoing discussion, as there is apparently no change in circumstances, we see no reason to interfere with the order passed by the learned Special Judge (POTA) and as the appeal is devoid of merits, the same is liable to fail. Hence, we pass the following order:

O R D E R

The appeal is dismissed.

[ANIL R. DAVE, J.]

[H. B. ANTANI, J.]

/shamnath